

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

METROPOLITAN MORTGAGE &
SECURITIES CO., INC. and SUMMIT
SECURITIES, INC.

Plaintiffs,

v.

PRICEWATERHOUSECOOPERS, LLP

Defendant.

No. CV-05-290-FVS

ORDER APPROVING STIPULATED
PROTECTIVE ORDER

The Court, being fully advised, now, therefore,

IT IS HEREBY ORDERED that the parties Stipulated Motion for Protective Order, **Ct. Rec. 47 and 48** are **GRANTED**. The Court approves the following protective order.

In order to protect the confidentiality of information obtained by the parties in connection with the consolidated cases above, the parties, through their counsel of record, hereby agree as follows:

A. Any party or non-party may designate as "Confidential," as set forth herein, any document or information the party or witness considers in good faith to contain non-public, confidential, trade secret, proprietary, or private financial information subject to protection under the Federal Rules of Civil Procedure (hereinafter referred to as "Confidential Information").

1 B. A party or non-party may designate a document produced by
2 it that that party or witness considers in good faith to contain
3 Confidential Information by marking the document "Confidential."

4 C. A party or non-party may designate information disclosed by
5 it during a deposition or in response to written discovery that that
6 party or witness considers in good faith to contain Confidential
7 Information by so indicating in said responses or on the record at
8 the deposition and requesting the preparation of a separate
9 transcript (or videotape) of such material. Both the non-
10 confidential and confidential transcripts (or videotapes) shall use a
11 single set of continuous numbers so that the continuity of the
12 deposition transcript pagination is maintained. Additionally a party
13 may designate in writing, within 30 days after receipt of said
14 responses or of the deposition transcript for which the designation
15 is proposed, that specific pages of the transcript (or portions of
16 the videotape) and/or specific responses be treated as Confidential
17 Information. All costs associated with the preparation of separate
18 confidential and non-confidential transcripts and videotapes or of
19 executing procedures for denominating Confidential Information in
20 transcripts as referenced in this Section shall be borne by the
21 designating party who shall also arrange for separate payment for
22 such services through the service provider(s).
23
24

25 D. Any Confidential Information that is inadvertently produced
26 without written notice or identification as to its confidential

1 nature may be so designated in writing by the producing party after
2 the realization that the Confidential Information has been produced
3 without such designation. However, until the discovery materials are
4 designated Confidential as set forth above, the parties shall be
5 entitled to treat the material as non-confidential. Upon
6 designation, such Confidential Information shall then be treated as
7 Confidential in accordance with the provisions of this Order.

8 E. Any non-designating party may object to any confidentiality
9 designations or any proposed confidentiality designations in writing
10 or on the record. Upon such an objection, the parties shall follow
11 the procedures described in paragraph J below. After any
12 confidentiality designation is made according to the procedures set
13 forth in paragraphs B, C, or D, the designated documents or
14 information shall be treated as confidential until the objection is
15 resolved according to the procedures described in paragraph J below.

17 F. No Confidential Information may be used for any purpose
18 other than litigation of (i) this action, (ii) any other action or
19 dispute involving the defendant in this action and Metropolitan
20 Mortgage & Securities Co., Inc. ("Metropolitan") or Summit
21 Securities, Inc. ("Summit") or any subsidiary of Metropolitan or
22 Summit (including, but not limited to, Western United Life Assurance
23 Co.) or any receiver or statutory successor to those entities
24 (collectively, "the Metropolitan Group"), or (iii) any investigatory
25 or enforcement proceeding brought by any federal or state agency
26

1 against the defendant in this action relating to the Metropolitan
2 Group (the actions and proceedings described in i, ii, and iii are
3 collectively referred to herein as "the Actions"), provided that any
4 party to this action that discloses Confidential Information, which
5 was designated confidential by another party or non-party in this
6 action, in another action obtains the agreement of all parties to
7 that other action to be bound by this Order prior to such disclosure.
8 Notwithstanding the foregoing, no Confidential Information produced
9 by a party or non-party in this case may be provided by the
10 recipient(s) to any party in In re Metropolitan Securities
11 Litigation, Case No. CV-04-025-FVS (E.D. Wa.), until the stay of
12 discovery imposed by the Private Securities Litigation Reform Act of
13 1995, 15 U.S.C. § 78u-4(b)(3)(B), has been lifted in that action.

15 G. Except with the prior written consent of the party or non-
16 party designating documents or other information confidential or upon
17 prior order of this Court obtained upon notice to such other counsel,
18 Confidential Information shall not be disclosed to any person other
19 than:

20 1. Counsel of record for the respective parties to the
21 Actions, including in-house counsel, co-counsel or insurance counsel;

22 2. Employees of such counsel assisting in the conduct of
23 the Actions for use in accordance with this stipulation and order;

24 3. The parties to the Actions (including their partners
25 and employees);
26

1 4. Consultants or experts retained for the prosecution or
2 defense of the Actions, provided that each such consultant or expert
3 shall have executed a copy of the Certification annexed to this Order
4 (which shall be retained by counsel to the party so disclosing the
5 Confidential Information) before being shown or given any
6 Confidential Information;

7 5. Any authors of the Confidential Information and any
8 individuals shown to have been an original recipient of the
9 Confidential Information;
10

11 6. The Court, court personnel, and court reporters in the
12 Actions;

13 7. Any mediator retained by any two or more parties to the
14 Actions, provided that each mediator shall have executed a copy of
15 the Certification annexed to this Order before being shown or given
16 any Confidential Information;

17 8. Any arbitrator retained by any two or more parties to
18 the Actions, provided that each arbitrator shall have executed a copy
19 of the Certification annexed to this Order before being shown or
20 given any Confidential Information;

21 9. Persons engaged by any counsel or party to the Actions
22 to photocopy, image, or maintain the Confidential Information;

23 10. Witnesses (other than persons described in paragraph
24 G(5)). A witness shall be requested to sign the Certification before
25 being shown Confidential Information. Any witness who will not sign
26

1 the Certification as requested may nevertheless be shown Confidential
2 Information only in a deposition (or at trial as provided for in
3 paragraph N). At the request of any party, the portion of the
4 deposition transcript involving the Confidential Information shall be
5 designated "Confidential" pursuant to paragraph C above. Witnesses
6 who will not sign the Certification as requested but who are shown
7 Confidential Information at a deposition shall not be allowed to
8 retain copies of the Confidential Information;
9

10 11. Other persons only (i) after notice to all parties and
11 upon order of the Court, or (ii) upon written consent of the
12 producing party.

13 12. Under no circumstances shall any Confidential
14 Information, or information set forth in or derived from Confidential
15 Information, be communicated, directly or indirectly, to any member
16 or form of the press or media without the prior consent of the party
17 or non-party that designated the Confidential Information.

18 H. For applications and motions to the Court on which a party
19 submits Confidential Information, all documents and chamber copies
20 containing Confidential Information that are submitted to the Court
21 shall be filed with the Court in sealed envelopes or other
22 appropriate sealed containers. On the outside of the envelope or
23 container, a copy of the first page of the document(s) shall be
24 attached. If Confidential Information is included in the first page
25 attached to the outside of the envelope or container, it may be
26

1 deleted from the outside copy. The word "CONFIDENTIAL" shall be
2 stamped on the envelope or container and a statement substantially in
3 the following form shall also be printed on the envelope:

4 This envelope or container is sealed pursuant to
5 Order of the Court, contains Confidential
6 Information and is not to be opened or the
 contents revealed except by Order of the Court or
 agreement by the parties.

7 In the event that the Court's local rules are amended to provide for
8 filing documents under seal using the Court's electronic case filing
9 procedures, those procedures may be followed in lieu of the
10 procedures described in the preceding paragraph.

11 I. Information produced by non-parties may be designated as
12 "Confidential" pursuant to paragraphs B, C, or D of this Order.
13 Nothing herein shall restrict a party or non-party from using or
14 disclosing its own Confidential Information in any manner it deems
15 appropriate.

16 J. If a party contends that any material designated as
17 "Confidential" is not entitled to confidential treatment, that party
18 may at any time give written notice challenging the designation to
19 the party that designated the material (the "designating party") as
20 "Confidential." The designating party shall respond in writing to
21 the notice challenging the designation within 20 days, or within such
22 other period of time as may be agreed upon by the parties. If the
23 designating party refuses to remove the "Confidential" designation,
24 its response shall state the reasons for this refusal. If the
25 parties are unable to resolve their dispute over the designation of
26

1 the material, any party may move the Court for an order removing the
2 designation or affirming that the designation was properly made. In
3 the event that any such motion is made, the party that designated the
4 material as "Confidential" shall have the burden of establishing that
5 the material is entitled to confidential treatment.

6 K. Notwithstanding any challenge to the designation of
7 material as Confidential Information, all material shall be treated
8 as confidential and shall be subject to the provisions hereof unless
9 and until one of the following occurs:

10 1. The party or non-party who designated the material as
11 Confidential Information withdraws such designation in writing; or

12 2. The Court rules the material is not Confidential
13 Information.
14

15 L. In the event any Confidential Information is subpoenaed or
16 requested during the pendency of any of the Actions by any court,
17 regulatory, administrative, law enforcement or legislative body or
18 any person or litigant purporting to have authority to subpoena or
19 request such information, including requests based on any state or
20 federal Freedom of Information Act, no Confidential Information shall
21 be so disclosed without first giving fourteen (14) calendar days'
22 advance written notice to the party or non-party that designated the
23 Confidential Information, so as to enable the party or non-party to
24 have a reasonable opportunity to seek appropriate relief.
25

26 M. All provisions of this Order restricting the communication

1 or use of Confidential Information shall continue to be binding after
2 the conclusion of this action, unless otherwise agreed or ordered.
3 Upon conclusion of the Actions, a party in the possession of
4 documents designated Confidential, other than that which is contained
5 in discovery responses, deposition transcripts and documents filed
6 with the Court, shall either (a) return such documents no later than
7 90 days after termination of the last Action, to counsel for the
8 party or non-party who provided such documents, or (b) destroy such
9 documents within 90 days upon consent of the party or non-party who
10 provided the documents, and certify in writing within 90 days that
11 the documents have been destroyed.
12

13 N. The terms of this Order do not preclude, limit, restrict,
14 or otherwise apply to the use of Confidential Information at trial.

15 O. Nothing herein shall be deemed to waive any applicable
16 privilege or work product protection, or to affect the ability of a
17 party or non-party to seek relief for an inadvertent disclosure of
18 material protected by privilege or work product protection.

19 P. Nothing herein shall limit, expand, supersede or in any way
20 alter or modify any other protective order or confidentiality
21 agreements that have been entered into by any of the parties to this
22 Order or in any of the Actions, including the Stipulated Protective
23 Order and Confidentiality Agreement Regarding Disclosure of Financial
24 Information for Settlement Purposes entered by this Court and the
25 Bankruptcy Court on or about February 15, 2005, and the Stipulated
26

1 Protective Order And Confidentiality Agreement regarding the
2 confidentiality of legal billing information entered by the
3 Bankruptcy Court on or about November 1, 2004. All such other
4 protective orders and confidentiality agreements in any of the
5 Actions shall remain in full force and effect.

6 Q. This Order may only be modified by the written consent of
7 all parties to the Order and the Court, or, with respect only to the
8 Confidential Information of a specific party or non-party, by the
9 written consent of that party or non-party that designated the
10 Confidential Information. Nothing contained herein shall be
11 construed or applied to alter or limit the rights of any party under
12 any applicable insurance parties. This Order shall not prevent any
13 party from later seeking to modify its terms or from seeking any such
14 further provisions or relief as may be deemed appropriate or
15 desirable.
16

17 R. The parties will remain bound by this Order and the Court
18 shall retain jurisdiction to enforce this Order after termination of
19 the Actions.
20
21
22
23
24
25
26

CERTIFICATION

I, _____, certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulated Protective Order dated _____, 2005, in *In re Metropolitan Securities Litigation*, No CV-04-0025-FVS (Consolidated). I have been given a copy of and have read that Order and agree to be bound by it. I understand that all such Confidential Information and copies thereof, including, but not limited to, any notes or other transcripts made therefrom, shall be maintained in a secure manner and shall be returned no later than 30 days after the termination of this action to the counsel for the party or other person who provided such Confidential Information.

DATED: _____

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this Order and furnish copies to counsel.

DATED this 9th day of March, 2006.

s/ Fred Van Sickle
Fred Van Sickle
United States District Judge